

CV-12-44891

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BARRY GLASPELL

Plaintiff

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING, HER MAJESTY
THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER
OF NATURAL RESOURCES, G. BRUCE MIGHTON, MUNICIPAL PROPERTY
ASSESSMENT CORPORATION, THE CORPORATION OF THE TOWNSHIP OF
NORTH KAWARTHA, TIM POWELL and JANE DOE**

Defendants

**STATEMENT OF DEFENCE of THE CORPORATION OF THE
TOWNSHIP OF NORTH KAWARTHA AND TIM POWELL**

1. The Defendants pleading admit the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 14 and 39 of the Statement of Claim.
2. The Defendants pleading deny the allegations contained in paragraphs 16, 17, 18, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 55 and 55 and specifically deny that the Plaintiff is entitled to the relief claimed in paragraphs 1 of the Statement of Claim.
3. The Defendants pleading have no knowledge with respect to the allegations contained in paragraphs 2, 3, 4, 5, 13, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 45, 46, 50, 51, 52, 53, 56, 57, 58, 59, 60, 61, and 62.

4. The Corporation of the Township of North Kawartha (the "Municipality") is a municipal corporation incorporated pursuant to the provisions of the *Municipal Act, 2001*, and is located in the County of Peterborough, Province of Ontario.
5. The Defendant, Tim Powell ("Powell"), is the duly appointed Chief Building Official for the Corporation of the Township of North Kawartha pursuant to the provisions of the *Building Code Act, 1992*.
6. As Chief Building Official, Powell is charged with the role of establishing policies for the enforcement of the *Building Code Act* and the *Building Code* for the municipality and to perform duties assigned to him as required by the *Building Code Act*.
7. At all material times, Powell carried out his duties as Chief Building Official for the municipal Defendant in accordance with the provisions of the *Building Code Act* and the *Building Code* over lands which the municipality has jurisdiction.
8. With respect to structures being in or on Big Cedar Lake, a lake within the Township of North Kawartha, the Municipal Defendant and Powell assert jurisdiction over those lands up to the highwater mark of Big Cedar Lake.
9. It has been the position of the Municipality and Powell that the jurisdiction to issue building permits pertains only to those lands which the municipality has jurisdiction.
10. It has been the position of the Municipality and Powell that a structure situated in or on the lake bed of Big Cedar Lake, beyond the highwater mark, is beyond the jurisdiction of the municipality.
11. It has been the position of the Municipality and Powell that any structure in or on the lake bed of Big Cedar Lake beyond the highwater mark is within the jurisdiction of the Crown and therefore beyond the jurisdiction of provincial statutes such as the *Building Code Act, 1992*.

12. The Defendants state that the purpose of the *Building Code Act, 1992* and *Building Code* amongst other things is to regulate the construction and erection of buildings and structures so as to protect the health and safety of those who inhabit them.

13. However, in those situations where there is no jurisdiction to apply the *Building Code Act* or the *Building Code* due to the structure being located on lands under federal jurisdiction, there can be no breach of any duty by either the municipality or its chief building official.

14. The Defendants state that the *Building Code Act* and the *Building Code* apply to all municipalities throughout the Province of Ontario and the act specifically imposes on each municipality the duty of enforcing same, such duty does not apply if the municipality does not have jurisdiction over the subject lands.

15. At all material times, the Municipality and Powell have applied the *Building Code Act* and *Building Code* equally to all citizens with respect to those lands over which the municipality has jurisdiction.

16. The Municipality and Powell deny that they have jurisdiction, or did at any material time, over structures erected on or in the lakebed of Big Cedar Lake or to regulate the construction of any such structures.

17. It is the position of the Municipal Defendant and Powell that since the subject boathouse was constructed or placed on "land" beyond the highwater mark of Big Cedar Lake, there is no ability to regulate such construction as a building permit is not required.

18. The Defendants pleading deny that the position to deny jurisdiction of a structure placed in or on the lakebed of Big Cedar Lake is in any way a refusal to apply or abide by provincial or federal legislation as alleged by the Plaintiff.

19. The Defendants further deny that the Municipality or Powell provided any advice to anyone, including Jane Doe, that was false, avoidant of municipal by-laws or provincial or federal legislation and puts the Plaintiff to the strict proof thereof.

20. The Defendant Powell specifically denies that he at any time advised or in any way instructed anyone, including Jane Doe, with respect to the planning, design, building on placement of a house and/or dock on the lakebed of Big Cedar Lake knowing it to be a contravention of municipal by-laws or provincial legislation and puts the Plaintiff to the strict proof thereof.

21. At no time has either the Municipality or Powell attempted to delegate authority provided to either pursuant to the *Municipal Act, 2001* or the *Building Code Act, 1992*, in the carrying out of their duties to the Plaintiff or anyone as alleged and puts the Plaintiff to the strict proof thereof.

22. The Defendants specifically deny actions which constitute bad faith, an abuse of public power or misfeasance in adopting the position of no jurisdiction beyond the highwater mark of Big Cedar Lake.

23. The Defendant Powell specifically denies that he at any time, or in concert with the municipality, acted in a position of conflict when applying the provisions of the *Building Code Act* or *Building Code* or otherwise as alleged by the Plaintiff and puts the Plaintiff to the strict proof thereof.

24. The Defendants pleading state that the relief claimed by the Plaintiff is not one known at law and denies that the Plaintiff suffered any damages or loss as alleged in the Statement of Claim.

25. Alternatively, if the Plaintiff has sustained any loss or damage, which is not admitted but specifically denied, such loss or damage is not caused or contributed to by any breach of duty or negligence on the part of the Municipality or Powell.

26. Furthermore, the Defendants pleading state that the damages or relief claimed by the Plaintiff is excessive and too remote to be recoverable at law.

27. The Defendants pleading rely upon the provisions of the *Building Code Act, 1992*, the *Municipal Act, 2001* and the *Planning Act*, all as amended.

28. The Defendants pleading state that the proper place for the trial of this matter is the City of Peterborough as the subject lands are in the County of Peterborough.

29. For the reasons set out herein, the Defendants pleading requests that this action be dismissed with costs payable to it on a substantial indemnity basis.

Dated: June 13, 2012

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